

## CABINET

### DELEGATION OF DEPRIVATION OF LIBERTY FUNCTION

#### Report of the Director for People

Strategic Aim:	Safeguarding	
Key Decision: Yes	Forward Plan Reference: FP/221119	
Cabinet Member(s) Responsible:	Mr A Walters, Portfolio Holder for Safeguarding - Adults, Public Health, Health Commissioning & Community Safety	
Contact Officer(s):	Kim Sorsky, Head of Prevention and Complex Care John Morley - Deputy Director of Adult Services	01572 758352 ksorsky@rutland.gov.uk 01572 758442 JNMorley@rutland.gov.uk

#### DECISION RECOMMENDATIONS

That Cabinet:

- (a) Approve the delegation of specific elements of the Deprivation of Liberty Safeguards function to Leicestershire County Council as set out in Section 3.1 of this report;
- (b) approve the continuation and extension of the delegation agreement with Leicestershire County Council to undertake those elements of the function on Rutland's behalf;
- (c) delegate the decision on future provision of the new Liberty Protection Safeguards legislation to the Strategic Director of People, in consultation with the Portfolio Holder for Safeguarding Adults, once the implications of that legislation are known.

## **1 PURPOSE OF THE REPORT**

- 1.1 This report sets out the current Deprivation of Liberty Safeguards (DoLS) legislation and expected changes, the current provision of the function, including continued delegation of specific elements of that function to Leicestershire County Council, and opportunities for future provision.

## **2 BACKGROUND AND MAIN CONSIDERATIONS**

- 2.1 The Mental Capacity Act 2005 legislation protects and supports people who do not have the ability to make decisions for themselves because they lack the capacity to do so. This is usually due to the onset of illness such as dementia in later life. The Act provides guidance to support people who need to make decisions on behalf of someone else.
- 2.2 The Deprivation of Liberty Safeguards (DoLS) are provided for within the Act to ensure that vulnerable people are provided with the least restrictive support whilst ensuring that they remain safe and the decisions taken on their behalf are in their best interests. For example where a person is prevented from leaving a care home to keep them safe against their wishes but not to be there would be a severe risk to them.
- 2.3 The Human Rights Act Article 5 states that no one can be deprived of their liberty except in certain situations and only when very specific procedures are in place. The DoLS process achieves this by a series of assessments by independent persons, including a clinician, to ensure the person's rights are being protected.
- 2.4 Local authorities act as the "Supervisory Body" and have a statutory duty to ensure the criteria to deprive a person lacking capacity to make decisions for themselves are met. The Council operate as the Supervisory Body for all Rutland residents.

## **3 EXPECTED CHANGES TO LEGISLATION**

- 3.1 The Mental Capacity (Amendment) Act 2019 will replace the current DoLS process with the Liberty Protection Safeguards (LPS) when it comes into force later in 2020.
- 3.2 The Government has confirmed that it expects a final draft of the Code of Practice for LPS to be produced in Spring 2020, along with the regulations, ahead of an expected implementation date for the amended Mental Capacity Act of 1 October 2020.
- 3.3 The new LPS process aims to streamline the DoLS process. It will share responsibility for assessing a DoLS with relevant health partners dependant on the adult's location and who commissions their support.
- 3.4 Until the Code of Practice and regulations are released, there are still a number of areas which are unknown in relation to the new process. These include: training requirements for Best Interest Assessors; which professionals can undertake the new assessments; and the exact responsibility expected of the health partners within the Clinical Commissioning Groups and wider NHS services.

## **4 CURRENT PROVISION OF DEPRIVATION OF LIBERTY SAFEGUARDS**

- 4.1 Leicestershire County Council currently provide a significant aspect of Rutland's DOLs statutory function:
- a) The provision of Best Interest Assessors (BIA) who are appropriately trained professionals (Social Workers or Occupational Therapists) who undertake the assessments to establish if a deprivation of liberty has occurred and recommend safeguards. Leicestershire hold a pool of BIAs to ensure they are able to meet demand.
  - b) Specialist doctors and Mental Health Assessors who carry out assessments under the Mental Health Act to diagnose a mental disorder.
  - c) The provision of legal and practice training to ensure that BIAs maintain their professional expertise.
  - d) The provision of information and advice regarding DoLS through a duty telephone line and email service to ensure that frontline staff and managers make appropriate referrals and can seek advice on whether a DoLS is required.
  - e) Responsibility for onward referrals to advocates for the vulnerable individual and/or their families.
  - f) Monitoring all DoLS reviews on Rutland's behalf and undertaking Best Interests reassessments.
- 4.2 Rutland County Council retain the legal responsibility for the authorisation of the DoLS. All assessments completed by the Leicestershire County Council Team are sent to the Council for review by a trained manager, who then authorises the DoLS.

## **5 FUTURE PROVISION**

- 5.1 The current delegation agreement with Leicestershire County Council has been in place since 1<sup>st</sup> April 2015 and is due to expire 31<sup>st</sup> March 2020. The current value is approximately £125,000 per annum. Payment is made on a per case basis and so value fluctuates annually.
- 5.2 The changes to the legislation and consequently implications for the provision of the DoLS function are not yet known. It is proposed to extend the delegation to Leicestershire County Council in line with the current delegated functions in the interim, for a period of one year with three months' notice period for both parties.
- 5.3 Depending on the requirements of the LPS process, there may be alternative ways to deliver Rutland's statutory responsibility which would need to be considered. Once the guidance is available, officers will undertake a review to ascertain the most effective and efficient way to meet the requirements. This may include whether the functions can be provided in-house, and whether - and what - changes would be needed to the agreement with Leicestershire should the delegation continue.

- 5.4 The responsibility for the statutory function will continue to sit with the Council - as it does now - regardless of how the functions are delivered in future. There would be no change in accountability or risk for the Council. Any changes would be driven by efficiency and control of process in meeting our statutory duty.
- 5.5 It proposed that the future decision on how the function is delivered and whether it continues to be delegated to Leicestershire County Council is delegated to the Strategic Director, in consultation with the Portfolio Holder. This will enable a decision to be made quickly in response to any changes, particularly as it is anticipated that timescales for implementation will be short, and to enable the processes to deliver the statutory function to be adapted as the full implications become clear.
- 5.6 The decision on changes to the delivery of the function would only be made by the Strategic Director where:
- i) the change will have no detrimental impact on service users;
  - ii) there is no increase in any risk to service users or to the Council;
  - iii) the financial implications remain the same and within the allocated budget.
- 5.7 If any of the above are not met, the decision will revert to Cabinet for their consideration and decision.

## **6 CONSULTATION**

- 6.1 Consultation has been undertaken with the Portfolio Holder.
- 6.2 Leicestershire County Council have confirmed they are happy to continue to provide those current elements of the requirement on our behalf for the period of the proposed extension.

## **7 ALTERNATIVE OPTIONS**

- 7.1 Rutland County Council are currently unable to provide the DoLS service internally due to the level of infrastructure required to host such a service, it would not be cost effective. At present, the number of referrals processed by Leicestershire on our behalf would not be sustainable and there is a potential risk that our inability to respond within timescales to DoLS assessment requests would cause us to fail our statutory requirements.
- 7.2 The changes to the legislation are currently unknown and once published, a review will need to be undertaken to consider whether the Council continue to delegate to Leicestershire County Council, and what is delegated; or whether the Council are able to meet the requirements to fulfil the statutory functions and provide appropriate safeguards for vulnerable individuals in-house.

## **8 FINANCIAL IMPLICATIONS**

- 8.1 The cost of continuing the current delegation agreement with Leicestershire County Council is approximately £125,000 per annum. The Council pay a set fee per case and so this fluctuates with activity. The set fee will remain unchanged.

The cost of the service is within the allocated budget.

- 8.2 Future costs of delivering against the new legislation are thus far unknown. When the new legislation and guidance becomes available, the review of delivery will enable officers to identify the most efficient way of fulfilling the Council's statutory duty and will review costs accordingly. Should these costs be outside of the existing budget provision, the proposals for future provision will be tabled at Cabinet for decision, along with the request for additional budget in line with the Financial Procedure Rules.

## **9 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 9.1 The Council has a statutory duty to meet the Deprivation of Liberty requirements. It is expected that similar requirements will continue under the new Liberty Protection Safeguards legislation.
- 9.2 The Constitution allows for any future delegation to be approved by Chief Officer.

## **10 DATA PROTECTION IMPLICATIONS**

- 10.1 There are no specific data protection implications to continuing the existing arrangement with Leicestershire County Council.
- 10.2 Data Protection will be taken into account when officers review the requirements for the council to meet the new legislation.

## **11 EQUALITY IMPACT ASSESSMENT**

- 11.1 There are no equality impact implications in the continuation of the contract.
- 11.2 An equality impact assessment will be undertaken when implementing any changes to service to meet the new legislation requirements.

## **12 COMMUNITY SAFETY IMPLICATIONS**

- 12.1 The delivery of the Deprivation of Liberty requirements ensures the safety and reduction of risk to vulnerable people.

## **13 HEALTH AND WELLBEING IMPLICATIONS**

- 13.1 The delivery of the Deprivation of Liberty requirements ensures that the health and wellbeing needs of vulnerable people are being met.

## **14 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

- 14.1 The continuation of the current delegation of specific elements of the DoLS is requested in order to ensure that Rutland can meet the statutory requirements, whilst maintaining overall responsibility for authorising each DoLS made. Whilst the delegation continues, then it is appropriate to maintain a contract with Leicestershire County Council to manage this.
- 14.2 The impact and requirements of the new Liberty Protection Safeguards not known. It is likely that the changes and, in particular, sharing the responsibility with health partners, may make the service viable to be provided in house, or will at the very

least require changes to the contact with Leicestershire in order to ensure changes are met through their service provision. Delegation to the Strategic Director for People will enable measures to be put in place quickly to ensure Rutland continues to meet statutory requirements.

## **15 BACKGROUND PAPERS**

15.1 There are no background papers to the report.

## **16 APPENDICES**

16.1 There are no appendices to this report.

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